IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4870 OF 2005

Rajesh Ghatalia. ... Applicant.

Versus.

Union of India. ... Respondents.

Shri Kitrit Parikh with Shri S.S.Khan for the Applicant.

Shri Riyaz Khan for the Respondent No.1.

Ms.M.H.Mhatre, A.P.P.for the State.

CORAM : ABHAY S. OKA, J.

DATED : 12th August, 2005.

P.C.:

1. Rule. The learned Counsel appearing for the Respondents waive service. Taken up for hearing forthwith.

2. By order dated 20th September 2004, the learned Special Judge, Greater Mumbai, directed the Respondents to return cash of Rs.16,70,590/- to M/s.Shiva Organics (India) Ltd. subject to the conditions incorporated in the said order. One of the conditions is that the said company shall furnish a bank guarantee in the sum of Rs.16,70,590/-. The present Application is filed by the Applicant who claims to be a Director of the said company for modification of the condition imposed regarding furnishing the bank guarantee.

3. The learned Counsel appearing for the Applicant

submitted that the said company is ready and willing to furnish any appropriate security to the satisfaction of the Court instead of a bank guarantee. It is submitted that it will be very difficult to procure a bank guarantee of such a large amount without depositing an amount equivalent to guarantee amount with the concerned Bank. The learned Counsel for the Respondents submitted that the Applicant can be directed to furnish a solvent surety to the satisfaction of the Special Judge.

4. In my view, the ends of justice will be served if the Company is permitted to receive the amount on furnishing security to the satisfaction of the learned Special Judge. It will be for the learned Special Judge to decide as to what should be the adequate security to the amount involved. However, he will not insist on furnishing bank guarantee.

5. Hence the Application is disposed of by the following order:

(i) Condition No.(ii) in clause 1 of the operative part of the Judgment and Order dated 20th September 2004 will be substituted by the following:

. "C.B.I. shall return the cash amount of Rs.16,70,590/- to M/s.Shiva Organics

(India) Ltd. on the said company furnishing security for the said amount to the satisfaction of the learned Special Judge."

(ii) Condition (iii) in clause (1) of the operative part of the order dated 20th September 2004 stands deleted.

(iii) Rest of the order dated 20th September 2004 is maintained.

(iv) Parties and the concerned Court to act on an authenticated copy of this order.

Judge.